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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,776

09/15/2003

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600179-002

1506

61834 7590 03/04/2009

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EXAMINER

CHORNESKY, ADAM B

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/662,776	<b>Applicant(s)</b> RIEDL ET AL.	
	<b>Examiner</b> ADAM CHORNESKY	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-1093 is/are pending in the application.
- 4a) Of the above claim(s) 13, 51, and 54-109 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-50, 52 and 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a Non-Final Office Action in response to Request for Continued Examination (RCE) received November 5, 2008. Claims 13 and 51 are cancelled, and Claims 54-109 are withdrawn by the Applicant. Claims 1-12, 14-50, 52 and 53 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 5, 2008 has been entered.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 43, 45, 49, and 50 and their dependent claims 44, 46-48, 52 and 53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to a particular machine or apparatus (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63,

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71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. . Here the claims fails to meet the above requirements because the steps are neither tied to a particular machine or apparatus nor physically transform underlying subject matter (such as an article or materials) to a different state or thing.

Also see, United State Court of Appeals for the Federal Circuit, 2007-1130,

(Serial No. 08/833,892)

IN RE BERNARD L. BILSKI

and RAND A. WARSAW.

In claim 43, the steps of “receiving multiple zoned copies...,” “recording a properly zoned copy ....,” determining the zone in which the client requesting a program is located...,” etc. should individually incorporate a particular machine (computer, apparatus or hardware per se); otherwise it can be concluded, under a broad interpretation, that those steps were manually performed. Here, to be statutory, under USC 101, each individual step should incorporate or should be performed using a particular machine (computer, apparatus or hardware per se).

In claim 45, the steps of “creating a playlist with identifiers...,” “determining the zone in which a requesting client resides ....,” adding identifiers for one or more advertisements...,” etc. should individually incorporate a particular machine (computer, apparatus or hardware per se); otherwise it can be concluded, under a broad interpretation, that those steps were manually performed. Here, to be statutory, under USC 101, each individual step should incorporate or should be performed using a particular machine (computer, apparatus or hardware per se).

In claim 49, the steps of “receiving a copy of a given program...,” “segmenting the program into program segments ....,” “retaining the program content...,” “receiving a request for the program ...”, etc. should individually incorporate a particular machine (computer, apparatus or hardware per se); otherwise it can be concluded, under a broad interpretation, that those steps were manually performed. Here, to be statutory, under USC 101, each individual step should incorporate or should be performed using a particular machine (computer, apparatus or hardware per se).

In claim 50, the steps of “receiving a playlist identifying programming...,” “transmitting video data ....,” “receiving a control command...,” “modifying the playlist in accordance with the control command ...”, etc. should individually incorporate a particular machine (computer, apparatus or hardware per se); otherwise it can be concluded, under a broad interpretation, that those steps were manually performed. Here, to be statutory, under USC 101, each individual step should incorporate or should be performed using a particular machine (computer, apparatus or hardware per se).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-12, 14-23 and 49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains,

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or with which it is most nearly connected, to make and/or use the invention. In independent claim 1 (lines 3-4), “select one or more advertisements according to a targeting algorithm” is not enabled because a person skilled in the art would not be able to practice the invention without undue experimentation (MPEP § 2164-2164.08(c)). Similarly, in independent claim 49, “segmenting the program” (line 5) and “calculating a program advertising zone” (line 11) are not enabled. “Practice” in the instant context means being able to achieve a repeatable result (a so-called “concrete” result, MPEP § 2106.IV.C.2(2)(c)). The specification does not disclose any objective means or algorithm by which one of ordinary skill in the art could repeatably identify said plurality of products.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-12, 14-23 and 34-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. In independent claim 1 (lines 3-4), “select one or more advertisements according to a targeting algorithm” is indefinite because the applicant has failed to disclose any objective means or algorithm by which to identify said plurality of products (*Aristocrat Techs. Austl. Pty Ltd. v Inter Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008)). Similarly, in independent claim 49, “segmenting the program” (line 5) and “calculating a program advertising zone” (line 11) are indefinite.

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9. In independent claim1 (line 7), “time shifted program” is indefinite because it lacks a “clear definition” (para. 11 and 12 below). Similarly, in independent claims 24, 34 and 43 (e.g., claim 24 line 5), “correctly/properly zoned” is indefinite.
10. Claim 45 recites the limitation "The method" in line 1. There is insufficient antecedent basis for this limitation in the claim.
11. Note on interpretation of claim terms - Unless a term is given a “clear definition” in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” (MPEP § 2111.01.III). A “clear definition” must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as “by xxx we mean”; “xxx is defined as”; or “xxx includes, ... but does not include ...”. An example does not constitute a “clear definition” beyond the scope of the example.
12. The instant application contains no such clear definition for the phrase “any of the phrases rejected above”. Some, included “time-shifted program”, are defined by example, but, as noted above, an example does not constitute the legally required “clear definition”.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 24-31, 45-50, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Eldering et al. (US PgPub 20020123928 A1).

Claim 24: Eldering discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

performing an action that invokes a request for a program (pg. 6, par. 90 via TV transactions are not limited to broadcast and cable television but may include pay per view (PPV), video on demand (VOD), near VOD (NVOD), or other video that may be delivered over a television access network);

collecting information regarding the request (pg. 6, par. 90 via the viewing characteristics database 610 may receive data from a TV viewing characteristics database 612 and an Internet viewing characteristics database 614);

generating a playlist utilizing a correctly zoned local advertisement and the requested program (pg. 14, pars. 158-160 and Figs. 30 and 31 via a typical cable television (CTV) hierarchy consisting of a zone or super head-end 3000 that receives national programming and distributes the national programming to a plurality of head-ends 3010; each HE 3010 serves an umber of nodes 2030; each node servers a plurality of subscribers 3030; the subscribers 3030 may be grouped by head-end (subzone) 3010, node (microzone) 3020 or branch 3040 and it is necessary for there to be a correlation between each subscriber 3030, their respective profile, and each head-end 3010, node 3020 or branch 3040; Fig. 31 illustrates an exemplary table correlating subscribers S1-S4 of FIG. 30, with their MAC-ID, a profile, and the subzone (head-end) 3000, node (microzone) 3020, and branch 3040 that are connected to within the CTV system); and



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delivering the local advertising and program to a client for decoding and playback (pg. 14, par. 161 via ads may be targeted to the subscribers within the subzone based on the subzone profile).

Claim 25: Eldering discloses all the elements of Claim 24 and further discloses wherein collecting information comprises collecting client information (abstract via monitoring subscriber viewing interactions, such as television viewing interactions, and generating viewing characteristics therefrom).

Claim 26: Eldering discloses all the elements of Claim 25, and further discloses wherein collecting information comprises collecting program information (pg. 7 pars. 93 and 94 and Fig. 7 via information related to the source material 720, such as ... program data 726 ...).

Claim 27: Eldering discloses all the elements of Claim 24, and further discloses wherein the client performs an action that invokes the request (pg., par. 90 and Figs. 5 and 6 via a TV viewing characteristics database 612 and an Internet viewing characteristics database 614 where each of these databases may receive transaction data from a TV transaction database 616 and an Internet transaction database 618 respectively ...).

Claim 28: Eldering discloses all the elements of Claim 24, and further discloses the invention comprising recording one copy of a given program for each local advertising zone that the video distribution system services (pg. 5, par. 85 and Fig. 5 via an exemplary system for

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grouping TV subscribers into subgroups and delivering targeted ads consisting of content providers 510, national advertisers 520, local advertisers 530, a Secure Correlation Server.TM. (SCS) 540, a Secure Profiling System (SPS) 550, a network operator, an access network and subscribers 580; where the national advertiser 520 delivers national ads 522 to the content providers 510 and the content providers 510 generate and deliver program streams 515, and then delivered to the SCS 540; the SCS 540 also receives additional national ads 524 and local ads 526 from the national advertiser 520, and local ads 535 from the local advertisers 530. The SCS 540 also receives subscriber profiles 555 from the SPS 550).

Claim 29: Eldering discloses all the elements of Claim 28, and further discloses the invention comprising segmenting local advertising out of each program copy and marking each segmented program copy with a zone identifier (pg. 4, par. 78 via subscribers are divided into subgroups, and different ads are targeted to each subgroup).

Claim 30: Eldering discloses all the elements of Claim 29, and further discloses wherein collecting information comprises collecting a zone identifier for the zone from which the request originates (pg. 8, pars. 110-112 and Fig. 6 via the purchasing characteristics database 620 may receive input from a variety of sources including, but not limited to, point of sale purchase characteristics 622, Internet purchase characteristics 624, phone purchase characteristics 626, and mail order purchase characteristics 628; and transaction characteristics database 630 may receive input related to a variety of transaction characteristics including but not limited to credit

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card transaction characteristics 632, phone transaction characteristics 634, banking transaction characteristics 636 and location transaction characteristics 638).

Claim 31: Eldering discloses all the elements of Claim 29, and further discloses wherein the segmenting is performed by identifying indicators for local advertising (pg. , par. 85 and Fig. 5 via grouping TV subscribers into subgroups and delivering targeted ads, and the SCS 540 determines which ads (additional national ads 524, local ads 526, 535) should be substituted (targeted) for the ad (default ad) within the program stream 515 and which subscribers 580 should receive which ads).

Claim 45: Eldering discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

creating a playlist with an identifiers for a given program and one or more national advertisements (pgs. 6-7, par. 92 and Fig. 7 via interaction with an electronic or interactive program guide (EPG) 718 and viewing characteristics vectors (VCPS 700) monitoring; and if the VCPS 700 was monitoring viewer interaction with a computer, interactive TV or other device connected to the Internet, the subscriber interactions may also include sites visited, click throughs, book marks and other commands applicable to Internet surfing);

determining the zone in which a requesting client resides (pg. 9, par. 116 and Figs. 5 and 17B via demographic segment information can be used in the exemplary TV delivery environment by combining it with the network operator's billing database as shown in Fig. 17B);

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adding identifiers for one or more local advertisements to the playlist based on the determined zone (pgs. 5-6, par. 87 and Fig. 5 via Secure Correlation Server (SCS 540) may create subgroups based on input from the SPS 550 and then match ads to those groups, or may receive ads having specific criteria and form groups based on the specific desires of the advertisers); and

delivering the playlist to a video server (pg. 5, par. 86 and Fig. 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ad; the presentation streams 545 are delivered to the network operator 560; the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 46: Eldering discloses all the elements of Claim 45, and further discloses the invention comprising the video server transmitting data identified in the playlist to a client for decoding and display (pg. 5, par. 86 and Fig. 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ads; the presentation streams 545 are delivered to the network operator 56, and the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 47: Eldering discloses all the elements of Claim 45, and further discloses comprising: calculating the zone in which a client resides; and selecting the proper local advertising for the zone in which the client resides (pg. 15, par. 164 and Fig. 35 via nodes are clustered together based on a correlation and each cluster of nodes receives a different

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presentation stream, and each cluster would have a cluster profile computed and could receive targeted ads based on the cluster profile).

Claim 48: Eldering discloses all the elements of Claim 45, and further discloses the invention comprising:

receiving a copy of a given program for each zone that the video distribution system services (pg. 15, par. 166 and Fig. 36 via clustering nodes can be used to create targeted channel lineups (TCL) that may include in addition to different presentation streams, different data/voice signals and different video on demand (VOD) signals are transmitted to the appropriate cluster of nodes, and each cluster of nodes receives its properly allocated TCL);

segmenting the received program into program content, national advertising and local advertising (pg. 15, par. 166 and Fig. 36 via an AIS 3600 creates three separate data signals, and a VOD server creates three separate VOD signals); and

discarding all but one copy of zoned programming with program content and national advertising (pg. 15, par. 166 and Fig. 36 via nodes N1, N3, N6 and N7 receive TCL-A, nodes N2 and N5 receive TCL-B, and nodes N4 and N8 receive TCL-C).

Claim 49: Eldering discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

receiving a copy of a given program for each zone that the video distribution system services (pg. 15, par. 166 and Fig. 36 via clustering nodes can be used to create targeted channel lineups (TCL) that may include in addition to different presentation streams, different data/voice

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signals and different video on demand (VOD) signals are transmitted to the appropriate cluster of nodes, and each cluster of nodes receives its properly allocated TCL);

segmenting the program into program content, national advertising and local advertising; retaining the program content and discarding the national and local advertising (pg. 5, par. 85 and Fig. 5 via the national advertiser 520 delivers national ads 522 to the content provider 510 to generate and deliver program streams; the program stream is delivered to the SCS 540, which also receives additional national ads 524 and local ads 520; the SCS 540 also receives subscriber profiles 555 from the SPS 550; the SCS 540 determines which ads, both additional national ads 524 and local ads 526 and 535 should be substituted for the default ad within the program stream 515);

receiving a request for the program from a client in a given zone (pg. 15, par. 166 and Fig. 36 via clustering nodes can be used to create targeted channel lineups (TCL) that may include in addition to different presentation streams, different data/voice signals and different video on demand (VOD) signals);

creating a playlist identifying the programming content (pg. 15, par. 166 and Fig. 36 via clustering nodes in order to create targeted channel lineups (TCL), and the appropriate sets of signals are then combined together (i.e., ESPN-A, DATA-A and VOD-A) to form TCLs);

calculating a program advertising zone in which the requesting client resides (pg. 15, par. 164 and Fig. 35 via nodes are clustered together based on a correlation and each cluster of nodes receives a different presentation stream, and each cluster would have a cluster profile computed and could receive targeted ads based on the cluster profile);

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adding identifiers for advertising to the playlist based on the zone in which the client resides (abstract via correlating ad profiles to subscriber/subscriber group profiles and selecting targeted advertisements for the subscribers/subscriber groups based on the correlation); and

delivering the playlist to a video server (pg. 5, par. 86 and Fig. 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ad; the presentation streams 545 are delivered to the network operator 560; the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 50: Elderling discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

receiving a playlist identifying programming and advertising information (pgs. 6-7, par. 92 and Fig. 7 via in generating one or more viewing characteristic vectors, the VCPS 700 receives input from the subscriber 710 in the form of commands from a subscriber interface device, such as a remote control);

transmitting video data identified in the playlist to a client operative to decode and display the video data (pgs. 3-4, par. 73 and Fig. 1 via the network operator 140 transmits the program stream (with approximately 20% of the national ads 125 replaced with local ads 128, 135) 145 to the subscribers 160 via the access network 150. The access network 150 may be a cable TV (CTV) network, a Switched Digital Video (SDV) network or other networks now known or later discovered and may have a hybrid fiber-coax (BFC) architecture, a satellite-based architecture, an Internet-based architecture, digital subscriber line (xDSL) architecture, fiber to

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the curb (FTTC) or fiber to the home (FTTH), or other architectures now known or later discovered);

receiving a control command from the client (pgs. 6-7, par. 92 and Fig. 7 via the VCPS 700 receives input from the subscriber 710 in the form of commands from a subscriber interface device, such as a remote control);

modifying the playlist in accordance with the control command, wherein the advertising information identified in the playlist is updated (pg. 2, par. 30 via targeted ads can be inserted into program streams using an Ad Insertion System (AIS); the AIS creates at least one presentation stream that is a program stream with an inserted targeted advertisement; a single presentation stream may be sent to the appropriate subscribers or multiple presentation streams may be sent and the appropriate presentation stream is selected by the node, the branch or the subscriber via a STB or PVR); and

transmitting video data identified in the modified playlist to the client (pgs. 3-4, par. 73 and Fig. 1 via the network operator 140 transmits the program stream (with approximately 20% of the national ads 125 replaced with local ads 128, 135) 145 to the subscribers 160 via the access network 150. The access network 150 may be a cable TV (CTV) network, a Switched Digital Video (SDV) network or other networks now known or later discovered and may have a hybrid fiber-coax (BFC) architecture, a satellite-based architecture, an Internet-based architecture, digital subscriber line (xDSL) architecture, fiber to the curb (FTTC) or fiber to the home (FTTH), or other architectures now known or later discovered).



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Claims 52 and 53: Elderling discloses all the elements of Claim 50, and further discloses the invention further comprising updating local and national advertising information (pg. 5, par. 85 and Fig. 5 via the Secure Correlation Server (SCS) determines which ads (additional national ads 524, local ads 526, 535) should be substituted (targeted) for the ad (default ad) within the program stream 515 and which subscribers 580 should receive which ads).

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 34-40, and 42 are rejected under 35 U.S.C. 102(a) as being anticipated by Lumley et al. (US Pat 6588013 B1).

Claim 34: Lumley discloses a system for delivering local advertising to a client in a video distribution system, the system comprising:

a client device operative to perform an action that invokes a request for a program (abstract via an interactive electronic television program guide);

an advertisement management system (AMS) operative to collection information regarding the request and generate a playlist utilizing a correctly zoned local advertisement and the requested program (abstract via promotional material is selected for distribution according to a promotional material selection algorithm); and

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a video server operative to receive the playlist and deliver the local advertisement and program to the client for decoding and playback (col. 11, lines 31-36 via if desired, the interactive application may be implemented using a client-server architecture in which the primary processing power for the application is provided by a server located at, for example, the television distribution facility or the main facility and user television equipment acts as a client processor).

Claim 35: Lumley discloses all the elements of Claim 34, and further discloses wherein the AMS is operative to collect information regarding the requesting client (col. 6, lines 57-65 and Fig. 1 via television distribution facility 16 has promotional event recorder 44 for maintaining a promotional event log which is provided to main facility 12 over communications link 15).

Claim 36: Lumley discloses all the elements of Claim 34, and further discloses wherein the AMS is operative to collect information regarding the requested program (col. 3, lines 20-40 via a promotional event log is maintained by the television distribution facility which may include entries for the time of day a promotional event was distributed or displayed, attributes of how the promotional event was performed, which script version was active at the time, the first choice of promotional event, the title of the promotional event, the actual file (e.g., text, graphic, audio or video) that was utilized in the promotional event, actual duration of the promotional event in milliseconds and frames, expected duration, display attributes, actual computed overlay (e.g., channel 16 at 4:00 P.M.), and any special play effect) .

Claim 37: Lumley discloses all the elements of Claim 34, and further discloses wherein the video server records one copy of a given program for each local advertising zone that the video distribution system services (col. 8, line 64 through col. 9, line 14 and Fig. 4 via promotional event log analyzer 30 may make changes to a promotional material selection algorithm if the algorithm does not provide for optimal promotional material selection, such as having certain promotional events in certain time slots for different time zones, having particular promotional events sent to television distribution facilities of a certain service configuration).

Claim 38: Lumley discloses all the elements of Claim 37, and further discloses wherein the video server segments local advertising out of each program and marks the segmented local advertising with a zone identifier (col. 1, line 65 through col. 2, line 9 via global promotional videos are also generated by a main facility and stored on laserdiscs and are provided to cable system headends via a suitable mail carrier in addition to the real-time stream of videos; the global promotional videos are displayed until a "local segment" occurs; during the "local segment" the headends select promotional videos from the laserdiscs according to a promotional philosophy or playlist).

Claim 39: Lumley discloses all the elements of Claim 38, and further discloses wherein the video server collects a zone identifier for the zone in which the client resides (col. 3, lines 41-61 via a promotional event log analyzer at the main facility is programmed to automatically determine if promotional material is being selected optimally based on the promotional event

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log, by way of a desirable occurrences database having a set of rules that may, for example include: having a large number of promotions of a particular theme during a particular time slot, having certain promotional events in certain time slots for different time zones, having particular promotional events sent to television distribution facilities of a certain service configuration).

Claim 40: Lumley discloses all the elements of Claim 37, and further discloses wherein the video server segments the local advertising by identifying indicators for the local advertising (col. 1, line 65 through col. 2, line 9 via global promotion videos are displayed until a “local segment” occurs; and col. 6, lines 8-20 and Fig. 2 via an illustrative promotional material display screen 80 may be divided into video promotion area 82, text promotion area 84, and program listings area 86 or any combination thereof).

Claim 42: Lumley discloses all the elements of Claim 34, and further discloses the invention comprising: the AMS determining if a given correctly zoned local advertisement has expired; and if the correctly zoned local advertisement has expired, the AMS generating a playlist utilizing a replacement local advertisement and the requested program (col. 3, lines 41-61 via a promotional event log analyzer at the main facility programmed to automatically determine if promotional material is being selected optimally based on the promotional event log, and programmed with a desirable occurrences database and an undesirable occurrences database, such as pay-per view).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-12, 14, 15, 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooks et al. (US Pat 6169542 B1) in view of Eldering et al. (US PgPub 20020123928 A1).

Claim 1: Hooks discloses a system for creating a program for delivery to a client in a video time shifting architecture, the system comprising:

an advertisement selection system (ADS) operative to select one or more advertisements according to a targeting algorithm and transmit one or more identifiers that uniquely identify the selected advertisements (col. 4, lines 9-11 via editing facility 28 generates advertisements or receives pre-recorded advertisements which are inserted into the original program) and (col. 2, lines 51-63 and figures 5 and 8 via editing facility 28 generates advertisements or receives pre-recorded advertisements which are inserted into the original program);

However, Hooks does not disclose the selection according to a targeting algorithm.

Eldering teaches monitoring subscriber viewing interactions such as television viewing interactions, and generating viewing characteristics therefrom. Eldering further teaches generating at least one type of subscriber profile, forming groups of subscribers by correlating at least one type of subscriber profile, where the subscriber groups may correlate to elements of a content delivery system (such as head-ends, nodes, branches, or set top boxes (STBs) within a

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cable TV system); and correlating ad profiles to subscribe/subscriber group profile and selecting targeted advertisements for the subscribers/subscriber groups based on the correlation (abstract).

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the system of targeting ads to subscribers based on privacy-protected subscriber profiles of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (pg. 2, par. 24).

Hooks further discloses an advertisement management system (AMS) operative to generate a playlist that identifies content, including a user requested time shifted program and the one or more selected advertisements (col. 2, lines 37-50 via transmitting an advertisement to an interactive video subscriber unit in connection with an interactive video program and receiving, at the head end facility over a return path, a request to register the advertisement in a menu); and

a video server operative to interpret the playlist and deliver the content to the user (col. 7, lines 5-15 and figure 1 via video server 60 multiplexes these two inputs with other optional video inputs, typically through modulation into different frequency bands, and outputs a broadband signal to video distribution medium 56).

Claim 2: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further disclose wherein the AMS generates a playlist that identifies a given one of the one or more

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selected advertisements as a bumper advertisements for delivery by the video server prior to the user requested program (col. 7, lines 16-22 and figures 1 and 2 via audio-to-data decoder 72 recognizes the audio tones recorded on synchronization channel 44 and generates the corresponding ASCII data codes 38 and couples to processor 74).

Claim 3: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the AMS generates a playlist that identifies a given one of the one or more selected advertisements as a pause teaser advertisement for delivery by the video server upon receipt of a pause control command (col. 5, lines 51-57 and figures 1, 2 and 3 via when medium 30 is played from its beginning, program-specific data 50 are read and stored in a head end facility processor before full-motion program 36 begins).

Claim 4: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the AMS generates a playlist that identifies a given one of the one or more selected advertisements as a pause advertisement for delivery by the video server upon the receipt of a pause advertisement control command (col. 8, lines 62-63 and figure 4 via a logo 108 identifies first advertisement 40 as an interactive advertisement).

Claim 5: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the playlist is indexed according to Normal Play Time (NPT) (applicant defines normal play time in specification pg. 8, lines 7-18 as markers to delimit content within the playlist as per col. 4, lines 54-65 and figures 2 and 3 of Hooks via coordination between a

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full-motion program 36 recorded on recording medium 30 and exemplary ASCII data codes 38 also recorded on recording medium 30 to mark where advertisements are inserted at predetermined time periods).

Claim 6: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the video server is operative to receive a pause control command from a client, mark the location in the playlist that corresponds to a point in time when the video server receives the pause command and advance to an advertisement in the playlist (col. 11, lines 8-17 and figures 6 and 8 via advertisement identifiers for a number of advertisements that were registered in menu database 79).

Claim 7: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the client displays a pause video still overlay upon transmission of a pause control command (col. 9, lines 5-8 and figure 4 via the subscriber creates a registration request, for example, by pressing a color coded key on subscriber interface 96 or by pressing another designated key or keys on subscriber interface 96).

Claim 8: Hooks and Eldering disclose all the elements of Claim 7 and Hooks further discloses wherein the pause video still overlay comprises operating instructions (col. 11, lines 53-65 and figure 9 via interactive menu 150 includes an intrasystem link (MORE INFO) entry 152, a purchase option (PLACE ORDER) entry 154, a hyperlink (VISIT WEB SITE) entry 156, a delete advertisement from menu entry 158, and a return to advertisement menu entry 160).



Claim 9: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the video server advances to a pause teaser advertisement in the playlist and begins delivery of the pause teaser advertisement (col. 10, lines 57-63 and figures 1, 4 and 7 via the video still image is then communicated from video server 60 through video distribution medium 56 to set-top box 94).

Claim 10: Hooks and Eldering disclose all the elements of Claim 9 and Hooks further discloses the invention comprising delivering the pause teaser advertisement to the client for display (col. 10, lines 57-63 and figures 1, 4 and 7 via the video still image is then communicated from video server 60 through video distribution medium 56 to set-top box 94).

Claims 11 and 12: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the video server returns to the location in the playlist that corresponds to a point in time when the video server receives the pause command and commences delivery of the user requested program (col. 11, lines 8-17 and figures 6 and 8 via advertisement identifiers for a number of advertisements that were registered in menu database 79).

Claim 14: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the targeting algorithm operates on the basis of aggregate viewing information (col. 4, lines 9-12 via a head end facility configured to transmit an advertisement in connection

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with an interactive video program and receive a request from one of the subscriber units to register the advertisement in a menu).

Claim 15: Hooks and Eldering disclose all the elements of Claim 14 and Hooks further discloses wherein the ADS comprises a connection to an external targeting system (col. 12, lines 59-65 and figures 1 and 7 via task 174 causes processor 74 to invoke web browser 90 from memory 78 to access a first web site 176 related to commercial enterprise 86).

Claim 17: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the ADS transmits advertisements and advertisement metadata to the AMS for storage in a content storage device (col. 3, lines 63-67 through col. 4, lines 1-8 and figure 1 via the editing facility 28 produces programs on recordable media such as video cassette recorder (VCR) tape for use on the VCRs at the head end unit 54).

Claim 18: Hooks and Eldering disclose all the elements of Claim 17, and Eldering further discloses wherein the AMS transmits an acknowledgement to the ADS upon receipt of the advertisement and advertisement metadata.

Eldering teaches on pgs. 5, par. 85 and Fig. 5 an exemplary system for grouping TV subscribers into subgroups and delivering targeted ads thereto. The program stream is delivered to the Secure Correlation Server (SCS 540). The SCS 540 also receives additional national ads 524 and local ads 526 from the national advertiser 520, and local ads 535 from the local

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advertisers 530. The SCS 540 also receives subscriber profiles 555 from the SPS 550. The SCS 540 is configured to correlate ads with subscribers, so that ad effectiveness is increased.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (pg. 2, par. 24).

Claim 19: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the video server receives control commands from the user (col. 9, lines 9-19 and figures 1, 4 and 5 via the registration request is forwarded through set-top box 94 over video distribution medium 56 and through video server 60 to an input 107 of processor 74).

Claim 20: Hooks and Eldering disclose all the elements of Claim 19 and Hooks further discloses wherein the video server requests a new playlist from the AMS upon the receipt of a new program initiation command from the user (col. 10, lines 57-63 and figures 1 and 7 via task 132 causes processor 74 to provide a video still image to the digital media server element of video server 60).

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Claim 21: Hooks and Eldering disclose all the elements of Claim 19 and Hooks further discloses wherein the AMS determines whether the user is requesting a program with expired local advertising (col. 9, lines 39-52 and figures 1, 5, 6 and 7 via entries to menu database 79 are added and removed in response to requests from any of interactive video subscriber units 22).

Claim 22: Hooks and Eldering disclose all the elements of Claim 21, and Eldering further discloses wherein the AMS transmits a request to the ADS to select one or more advertisements for replacement of expired local advertising within the playlist.

Eldering teaches on pg. 5, par. 86 and Fig. 5 that the Secure Correlation Server (SCS 540) creates presentation streams 545 that have the same programming but targeted ads in place of the default ad.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (pg. 2, par. 24).

Claim 23: Hooks and Eldering disclose all the elements of Claim 20, and Eldering further discloses wherein the AMS transmits a request to the ADS to select one or more local advertisements included in the program as originally broadcast.

Eldering teaches on pg. 5, par. 86 and Fig. 5 that the Secure Correlation Server (SCS 540) creates presentation streams 545 that have the same programming but targeted ads in place of the default ad. The presentation streams 545 are delivered to the network operator 560, who in turn delivers them to the subscribers 580. The network operator 560 may deliver each presentation stream 545 to each subscriber 580 and an indication of which ad is designated for which subscriber 580 or may deliver only the appropriate presentation stream 545 to each subscriber 580.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (pg. 2, par. 24).

13. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Hooks et al. (US Pat 6169542 B1).

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Claim 43: Eldering discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

receiving multiple zoned copies of a given program, each zoned copy containing proper local advertising for a given zone (pg. 14, par. 158 and Fig. 30 via groups may be formed based on the layout of a cable TV plant; a zone or super head-end 3000 receives national programming via satellite or other means from content providers and distributes national programming to a plurality of head-ends 3010; each HE 3010 serves a number of nodes 3020; each node 3020 serves a plurality of subscribers 3030 via a plurality of branches 3040 from each node 3020);

recording a properly zoned copy of a given program for each zone the video distribution system services (pg. 2, par. 25 via monitoring subscriber interaction with the television and aggregating the data to form the viewing characteristics, where the subscriber interaction includes at least some subset of channel changes, volume changes, EPG activation and **record** commands);

determining the zone in which the client requesting a program is located; and transmitting a properly zoned copy of the requested program to the client (pgs. 15-16, pars. 169-171 and Figs. 37B, 38A-C, and 39 via a node receiving multiple presentation streams at different frequencies, where the presentation streams can be transmitted using several methods and then mapped to the appropriate branch within the node; and at the frequency remapping module 3370, different digital signals are re-mapped such that multiple versions of the digital channels containing alternate programming or advertising sequences are re-mapped for transmission to the individual branch zones; and different digital presentation streams being transmitted at different wavelengths).

14. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hooks et al. (US 6169542 B1) in view of Eldering et al. (US PgPub 20020123928 A1), and further in view of Nathaniel (US 20030130887 A1) and Zizzamia et al. (US 20020161609 A1).

Claim 16: Hooks and Eldering disclose all the elements of Claim 14, but do not disclose wherein the external targeting system is selected from the group comprising a PRIZM system and an AXCIOM system.

Nathaniel teaches on pg. 3 par. 23 lines 33-34 that network data on impressions and click-throughs can be estimated based on zip code based data from Claritas PRIZM codes.

Therefore, from the teaching of Nathaniel it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks in combination with the system of targeting ads to subscribers based on privacy-protected subscriber profiles of Eldering to include the non-deterministic method and system for the optimization of a targeted content delivery of Nathaniel in order to schedule delivery of targeted content to network devices in an optimal manner that is flexible and can be fine-tuned on the fly (pg. 1 par. 6 lines 1-4).

Zizzamia teaches on pg. 4 par. 37 lines 1-3 that external data sources also include business owner household level demographics from data providers such as AXCIOM or INFO-USA.

Therefore, from the teaching of Zizzamia it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering

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advertising through an interactive video distribution system of Hooks in combination with the system of targeting ads to subscribers based on privacy-protected subscriber profiles of Eldering to include the quantitative system and method that employs data sources external to an insurance company to generate a statistical model of Zizzamia in order to use external data sources to provide higher demographic accuracy (pg. 1 par. 11 lines 2-5).

15. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Liga et al. (US PgPub 20030154128 A1).

Claim 32: Eldering disclose all the elements of Claim 31, but does not disclose wherein identifying is conducted according to one or more of a set consisting of SCTE 35 cue packets, DTMF cues, contact closures triggered by an analog signal, network messages from an insertion system and network messages from a stat-mux/splicer.

Liga teaches on pg. 2 par. 23 lines 10-13 that embedded data may be transmitted as separate data packets in the data stream comprising the video signal, or in network signals such as Society of Cable Telecommunications Engineers (SCTE) standards, such as the DVS 253 standard for cueing advertisements. Liga et al. also teaches on pg. 7 par. 82 lines 1-7 detecting advertisements either by receiving the embedded data, or receiving a signal indicating the cessation of the program and beginning of an advertisement, where this signal may be, for example, a dual-tone frequency modulated (DTMF) signal, a DVS 253 or 380 signal, or any form of embedded command data of an analog or digital nature. Liga et al. also teaches in figure



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3 and on pg. 4 par. 42 lines 9-11 that once modulated, the digital signals are combined with standard network channel broadcasts by the multiplexor 340

Therefore, from the teaching of Liga it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of segmenting local advertising by identifying indicators of Eldering to include the method and system for displaying updated, targeted, and/or alternately formatted advertisements to a consumer of Liga in order to use targeted ads in conjunction with consumer profile information to reach interested consumers (abstract lines 3-4).

16. Claims 33 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Cowan et al. (US Pat 6941573 B1).

Claim 33: Eldering discloses all the elements of Claim 24, but does not disclose the invention comprising:

determining if a given correctly zoned local advertisement has expired; and if the correctly zoned local advertisement has expired, generating a playlist utilizing a replacement local advertisement and the requested program.

Cowan teaches in col. 4 lines 35-40 that substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

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Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method for delivering local advertising to a client in a video distribution system of Eldering to include the television distribution system for signal substitution of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served and which avoids the problems, costs and user resistance of an individually addressed arrangement (col. 2 lines 12-16).

Claim 44: Eldering and Hooks disclose all the elements of Claim 43, but Eldering and Hooks do not disclose the invention comprising: receiving a request for a program from the client; and selecting the properly zoned copy of the requested program.

Cowan teaches in col. 4 lines 35-40 that substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks in combination with the targeting ads to subscribers of Eldering to include the television distribution system for signal substitution of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served and which avoids the problems, costs and user resistance of an individually addressed arrangement (col. 2 lines 12-16).

17. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumley et al. (US Pat 6588013 B1) in view of Liga et al. (US PgPub 20030154128 A1).

Claim 41: Lumley disclose all the elements of Claim 40, but do not disclose wherein the indicators are selected from a set consisting of SCTE 35 cue packets, DTMF cues, contact closures triggered by an analog signal, network messages from an insertion system and network messages from a stat-mux/splicer.

Liga teaches on pg. 2 par. 23 lines 10-13 that embedded data may be transmitted as separate data packets in the data stream comprising the video signal, or in network signals such as Society of Cable Telecommunications Engineers (SCTE) standards, such as the DVS 253 standard for cueing advertisements. Liga et al. also teaches on pg. 7 par. 82 lines 1-7 detecting advertisements either by receiving the embedded data, or receiving a signal indicating the cessation of the program and beginning of an advertisement, where this signal may be, for example, a dual-tone frequency modulated (DTMF) signal, a DVS 253 or 380 signal, or any form of embedded command data of an analog or digital nature. Liga et al. also teaches in figure 3 and on pg. 4 par. 42 lines 9-11 that once modulated, the digital signals are combined with standard network channel broadcasts by the multiplexor 340.

Therefore, from the teaching of Liga it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the local advertising segmentation of Lumley to include the method and system for displaying updated, targeted, and/or alternately

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formatted advertisements to a consumer of Liga in order to use targeted ads in conjunction with consumer profile information to reach interested consumers (abstract lines 3-4).

***Response to Arguments***

18. Applicant's arguments filed November 5, 2008 have been fully considered but they are not persuasive.

The Applicant argues on pg. 28 with respect to claims 43, 45, 49, and 50 “that 35 U.S.C. 101, neither on its face, nor as described under §2106.01 of the MPEP, requires a tie to another statutory class or a transformation as the Examiner contends ... [and] ... In addition, claims 43, 45, 49, and 50 do not fall outside of the statutory categories of invention, such as ... abstract ideas, laws of nature and natural phenomena ... [and] ... claims 43, 45, 49, and 50 produce a useful, concrete and tangible result, namely the delivery and transmission of advertisements to a client.” The Examiner respectfully disagrees. As per the 101 rejection *supra*, each element of the method claims must be tied to a machine or apparatus in order to provide enablement. Simply performing a series of steps can be interpreted by the Examiner to be performing human steps, or through any manner of enablement. Generic computers without code or instructions do not perform a series of step, and neither does software (which is not patentable per se). Any method claim must provide enablement via a machine, which in most cases is the combination of hardware (usually a computer or computer hardware) and software to perform a series of steps.

19. Applicant's arguments with respect to claims 1, 24, 34, 43, 45, 49 and 50 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are:

- a. Flickinger (US PgPub 20010032333 A1) teaches scheduling and presenting IPG ads in conjunction with programming ads in a television environment.
- b. Eldering (US PgPub 20020087980 A1) teaches grouping advertisement subavails.
- c. Smith et al. (US PgPub 20030006911 A1) teaches an interactive advertising system and method.
- d. Caplan (US PgPub 20030050834 A1) teaches a system and method for dynamic customizable interactive portal active during select computer time.
- e. Register et al. (US PgPub 20040128198 A1) teaches a system and method for computer network-based enterprise media distribution.
- f. Plotnick et al. (US PgPub 20090030802 A1) teaches a universal ad queue.
- g. Hendricks et al. (US Pat 5659350 A) teaches an operations center for a television program packaging and delivery system.
- h. Hendricks et al. (US Pat 5682195 A) teaches a digital cable headend for cable television delivery system.
- i. Hendricks et al. (US Pat 5990927 A) teaches an advanced set top terminal for cable television delivery system.
- j. Eldering et al. (US PgPub 6704930 B1) teaches advertisement insertion techniques for digital video streams.

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k. Ward, III et al. (US PgPub 6756997 B1) teaches systems and methods for displaying and recording control interface with television programs, video, advertising information and program scheduling information.

l. Hendricks et al. (US Pat 7343614 B1) teaches a program delivery system for VOD.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM CHORNESKY whose telephone number is (571)270-5103. The examiner can normally be reached on Monday - Thursday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A. Chornesky  
February 28, 2009

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